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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF COLORADO

10 WESTERN WATERSHEDS)	Case No.
11 PROJECT,)	
12 Plaintiff)	COMPLAINT
13 vs.)	(Declaratory and Injunctive Relief)
14 U.S. FOREST SERVICE,)	
15 Defendant.)	

16 Plaintiff WESTERN WATERSHEDS PROJECT, by and through their attorney, for their
17 Complaint against Defendants allege as follows:

18 **INTRODUCTION**

19 1. This action challenges the Decision Notice and Finding of No Significant Impact for
20 the Salida-Leadville Range Allotment Management Plan, which is a decision by the U.S. Forest
21 Service to re-authorize livestock grazing on thirteen grazing allotments covering about one-quarter
22 of a million acres on the Pike-San Isabel National Forest in southern Colorado.

23 2. The grazing would occur on lands that have been demonstrably impaired by previous
24 livestock grazing, but the Forest Service has chosen to continue to graze the same livestock numbers,
25 in the same seasons, and in the same manner as livestock have been grazed in the past, even though
26 this practice has led to admitted violations of federal environmental standards.

1 16 U.S.C. § 1600 *et seq.*, the Administrative Procedure Act, 5 U.S.C. § 701 *et. seq.*, the Declaratory
2 Judgment Act, 28 U.S.C. § 2201 *et. seq.*, and the Equal Access to Justice Act, 28 U.S.C. § 2214 *et.*
3 *seq.* An actual, justiciable controversy now exists between the plaintiff and the defendant, and the
4 requested relief is proper under 28 U.S.C. §§ 2201-02 and 5 U.S.C. §§ 701-706.

5 8. This Court may grant the relief requested under 28 U.S.C. §§ 2201 and 2202
6 (declaratory and injunctive relief) and 5 U.S.C. § 701-706 (APA).

7 9. Venue is proper in the District Court for the District of Colorado pursuant to 28
8 U.S.C. § 1391(e)(2) because a substantial part of the events giving rise to Western Watersheds
9 Project's claims occurred in this district. The project occurs in and was authorized in this judicial
10 district.

11 **THE PARTIES**

12 10. Plaintiff WESTERN WATERSHEDS PROJECT (“WWP”) is a non-profit
13 membership organization headquartered at the Greenfire Preserve in Custer County, Idaho, with
14 offices and staff in Salmon, Hailey, McCall and Boise, Idaho; and also in Arizona, California,
15 Montana, Wyoming, and Utah. WWP is dedicated to protecting and conserving the public lands and
16 natural resources of watersheds in the American West. WWP, as an organization and on behalf of
17 its 1,200-plus members, is concerned with and active in seeking to protect and improve the wildlife,
18 riparian areas, water quality, fisheries, and other natural resources and ecological values of
19 watersheds throughout the West, including Colorado. WWP is also active in monitoring ecological
20 conditions in Colorado, including the challenged allotments in question; in reviewing and
21 commenting upon agency grazing and other resource decisions, including those at issue here; and in
22 publicizing the ecological effects of grazing in this region.

23 11. WWP has actively participated in management of livestock grazing on the Pike-San
24 Isabel National Forest through letters, comments, field trips, and administrative appeals of the Salida
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1 Grazing Project, which is the subject of this lawsuit. WWP has taken many opportunities to express
2 its concerns over management of these allotments. WWP, and its staff and members, use and enjoy
3 the wildlife, public lands, and other natural resources on the Pike-San Isabel National Forest for
4 many health, recreational, scientific, spiritual, educational, aesthetic, and other purposes. WWP and
5 its staff and members pursue activities such as hiking, wildlife viewing, biological and botanical
6 research, photography, and spiritual renewal on the Pike San-Isabel National Forest and on the
7 subject allotments. Livestock grazing that degrades this fragile ecosystem impairs the use and
8 enjoyment of this public landscape by WWP staff and members.
9

10 12. WWP staff, members, and supporters will continue to visit the Pike San-Isabel
11 National Forest and subject allotments in the future for many purposes such as hiking, wildlife
12 viewing, photography, scientific study, spiritual renewal, and to otherwise enjoy the natural scenery
13 and beauty of the Pike-San Isabel National Forest. WWP, both organizationally and on behalf of its
14 staff, members, and supporters, has an interest in the preservation and protection of the ecology of
15 the Pike-San Isabel National Forest, which interest is directly harmed by Defendant's actions and
16 inactions challenged herein.

17 13. The above-described conservation, recreational, scientific, and aesthetic interests of
18 WWP and its staff, members and supporters have been, are being, and, unless the relief prayed for is
19 granted, will continue to be adversely affected and irreparably injured by Defendant's violations of
20 law. WWP has no adequate remedy at law, and thus the requested relief is appropriate.

21 14. Defendant UNITED STATES FOREST SERVICE is an agency or instrumentality of
22 the United States, and is charged with managing the public lands and resources of the Pike-San
23 Isabel National Forest, in accordance and compliance with federal laws and regulations.
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25 **STATEMENT OF FACTS**

26 **The Pike-San Isabel Forest Plan**

1 15. In 1984, the Pike-San Isabel National Forest adopted its Land Resource and
2 Management Plan, or "Forest Plan." The Forest Plan governs management of the Pike-San Isabel
3 National Forest, including the challenged grazing allotments. It contains many requirements
4 designed to protect natural resource values.

5 16. The National Forest Management Act requires all management decisions to be
6 consistent with the governing Forest Plan. 16 U.S.C. § 1604(i).

7 17. The Pike-San Isabel Forest Plan requires the Forest Service to "[m]aintain habitat for
8 viable populations of all existing vertebrate wildlife species." It has as a further goal to "[i]mprove
9 fish habitat on suitable streams" and to "maintain habitat effectiveness for elk."

10 18. The Forest Plan also requires the Forest Service to protect range vegetative condition.
11 It requires the Forest Service to "[a]chieve or maintain satisfactory range conditions on all
12 rangelands,"and to "[p]revent livestock and wildlife grazing which reduces the percent of plant cover
13 to less than the amount needed for watershed protection and plant health."

14 19. Water quality and riparian area protection are particularly emphasized in the Forest
15 Plan. The Plan requires the Forest Service to "[r]educe to a natural rate any erosion due to
16 management activity in the season of disturbance and sediment yields within one year of the activity
17 through necessary mitigation measures." Disturbed riparian areas are to be rehabilitated, and Forest
18 Service is to "[p]revent stream channel instability, loss of channel cross-sectional areas, and loss of
19 water quality resulting from activities that alter vegetative cover." Eighty percent of ground cover is
20 to be maintained within 100 feet of all perennial streams, and sediment yield is to be maintained
21 within specific limits.

22 20. Soil productivity is also protected by the Forest Plan. The Plan states that "[s]oil and
23 vegetation condition must be restored to at least the pre-treatment condition by the return to the same
24 point in the grazing cycle." The Plan calls for soil disturbance to be restored "to soil loss tolerance
25 levels commensurate with the natural ecological processes."
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2 **The Challenged Allotments**

3 21. The Forest Service analyzed continued grazing on thirteen allotments, encompassing
4 about 284,000 acres in southern Colorado. Two of these allotments, the Fooses Creek and Arkansas
5 Sheep and Goat allotments, are currently not being grazed. The remaining eleven allotments are the
6 Arkansas, Aspen Ridge, Bassam, Bear Creek, Browns Creek, Cameron, Chalk Creek, Chubb ,
7 Fourmile, Little Cochetopa, and Union Cattle and Horse allotments.

8 22. These allotments contain important and diminishing wildlife habitat, riparian areas,
9 wetlands, and streams.

10 23. The allotments contain habitat for several endangered and sensitive species, including
11 the threatened Canada lynx, the threatened Mexican spotted owl, and the endangered Uncompahgre
12 fritillary butterfly. Special status species like the boreal toad and Rocky Mountain capshell snail are
13 also found in the area.

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16 **The Challenged Decision**

17 24. On September 24, 2008, William A. Schuckert, District Ranger for the Salida District
18 of the Pike-San Isabel National Forest, signed the Decision Notice and Finding of No Significant
19 Impact for the Salida-Leadville Range Allotment Management Plan, which covers all of the
20 challenged allotments.

21 25. The Forest Service analyzed two "action" alternatives. Alternative B would continue
22 grazing under the same terms as it has been conducted under in the past three to five years.
23 Alternative C, which was the selected alternative, does not change the terms of grazing, but adds an
24 ambitious monitoring plan and authorizes the Forest Service to construct up to 135 new water
25 developments in the future.

1 26. The Forest Service's Decision Notice continues current grazing on the allotments,
2 stating that the chosen alternative "will not modify the term grazing permits on the subject
3 allotments."

4 27. The decision also grants permittees one full year before any changes need take place,
5 and a minimum of three years will be required before any significant reductions will be made in
6 grazing numbers or season of use.

7 28. According to the environmental assessment prepared for the area, natural resources in
8 the allotments have been significantly impaired by livestock grazing. For example, of twenty-
9 nine monitored grazing areas, nineteen are not meeting desired vegetative conditions, and of those
10 nineteen, ten are in a downward trend.

11 29. Streams and wetlands across this large landscape are also impaired from overgrazing.
12 Of eighteen streams measured, eight were "functioning at risk" and one was "non-functioning."
13 None of the "functioning at risk" sites showed an upward trend. Moreover, of twenty-nine
14 watersheds in the area, eleven were found to have "major impacts to the land" that have "resulted in
15 severe damage to stream and riparian function." The Forest Service specialist reported that under
16 the current grazing regime, "negatively effected areas will continue to expand."

17 30. Livestock grazing in the area has been so severe as even to affect archaeological sites.
18 The Forest Service's EA declares that continuing grazing as before has the potential to cause
19 "significant information loss" at prehistoric sites.

20 31. Three species that inhabit the area and that are listed under the federal Endangered
21 Species Act were found to be suffering unlawful population declines from grazing. The Canada
22 lynx, Mexican spotted owl, and Uncompahgre fritillary butterfly all were found to have populations
23 that are "likely to be adversely affected" by a continuation of grazing as it has occurred in the
24 previous three to five years. The biologist's determination for the boreal toad, a Forest Service
25 "sensitive" species, found that continued grazing as before was "likely to result in a loss of viability
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1 in the planning area, or in a trend toward federal listing." The Rocky Mountain capshell snail
2 received the same finding, as did a rare plant which is found on one allotment in the area.

3 32. Even soil productivity has suffered from grazing here. The EA states that under
4 current grazing there would be a "continuation or increase of soil erosional losses" and a
5 concomitant "loss of long-term soil productivity."

6 33. In sum, every environmental resource the Forest Service has measured in this
7 planning area has been impaired beyond federal standards by livestock overgrazing.

8 34. The EA and the Decision fail to protect habitat for special-status and federally listed
9 wildlife species.

10 35. The EA and Decision fail to take a "hard look" at the effects of this continued grazing
11 on natural resources including wildlife habitat, soil productivity, riparian condition, and water
12 quality.

13 36. The EA and Decision fail to consider direct, indirect, and cumulative effects to
14 natural resources from their plan to continue grazing in the challenged allotments.

15 37. The EA also failed to evaluate any alternative that would provide a direct and
16 appropriately swift management response to the multiple natural resource problems the Forest
17 Service specialists noted.

18 38. Western Watersheds Project submitted a timely administrative appeal of the project
19 on December 1, 2008. On January 14, 2009, the Forest Service upheld its decision and denied all
20 requests for relief. Western Watersheds Project has exhausted all administrative remedies before
21 electing this forum to pursue its challenges to the decisions.

22 39. As of late June 2009, the Forest Service has released its 2009 term permits for just
23 over half of the allotments, with the remainder to be released soon. They call for no substantive
24 changes to the grazing scheme that has led to the resource damage noted in the environmental
25 assessment.
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FIRST CLAIM FOR RELIEF

**(Violation of NEPA: Failure to prepare an Environmental Impact Statement or take a Hard
Look at the environmental effects of the selected alternative)**

40. Each and every allegation set forth in this Complaint is incorporated herein by reference.

41. The fundamental purpose of the National Environmental Policy Act is to ensure that federal actions receive appropriately detailed environmental review. 42 U.S.C. § 4332. The NEPA requires federal agencies to take a “hard look” at their actions, and to assess the environmental impacts of those actions in a forthright and public manner. When analyzing projects that “may” have a significant effect on the environment, agencies are to consider various alternatives to the project that might be environmentally preferable to the original proposal. 42 U.S.C. § 4332(A); 40 C.F.R. § 1502.14.

42. NEPA requires federal agencies to prepare a detailed Environmental Impact Statement (“EIS”) prior to taking an action that could “significantly” affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

43. When it is not clear whether or not an action will require the preparation of an EIS, the regulations direct agencies to prepare a document known as an Environmental Assessment (“EA”) in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9.

44. Environmental Impact Statements are required to be prepared for actions that may have a significant effect on the environment; they exist to show that the agency took a "hard look" at the effects of its actions and revealed those actions to the public and the decision-maker.

45. The purpose of NEPA analysis is to ensure that the agency has conducted an adequate assessment of the environmental impacts of a given project. In certain circumstances, an agency may first prepare an EA to make a preliminary determination whether the proposed action will have a significant environmental effect. If the EA establishes that the agency's action *may* have a

1 significant effect upon the environment, an EIS must be prepared. If not, the agency must issue a
2 FONSI accompanied by a convincing statement of reasons to explain why a project's impacts are
3 insignificant. Regardless of whether an EA or EIS is prepared, however, the agency must
4 demonstrate that it took a "hard look" at the environmental consequences of the proposed action and
5 that it considered all foreseeable direct and indirect impacts.

6 46. A party seeking to show that an agency should have prepared an EIS instead of a
7 FONSI need not demonstrate that significant effects will occur, but rather must show only that there
8 are substantial questions whether a project may have a significant effect on the environment.

9 47. Because the EA at issue here documents numerous significant effects from past
10 grazing, and because its plan will continue that grazing with only vague, undefined future plans to
11 modify it in some way that may not ever come to pass, and EIS is required.

12 48. Moreover, some of the features the EA authorizes, but does not evaluate, are of such
13 scope and intensity that they alone warrant evaluation in an EIS. These include the construction of
14 some 135 potential water developments including the construction of 40 miles of pipeline.

15 49. Because the Forest Service has proposed a continuation of practices that have
16 demonstrably affected the environment and violated federal standards, and because the Forest
17 Service has proposed an action that may have sweeping, widespread, and long-term direct and
18 cumulative impacts to wildlife, water quality, archaeological resources, and soil productivity over a
19 280,000 acre expanse of public lands, its decision to authorize this project with an EA and FONSI
20 was arbitrary, capricious, and contrary to law, and must be reversed and remanded under the APA, 5
21 U.S.C. § 706 *et. seq*

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23 **SECOND CLAIM FOR RELIEF**

24 **(Violation of NEPA: Failure to Evaluate a Reasonable Range of Alternatives)**
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